IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 766 of 2006

Mohd. Asraf
S/o Mohd. Usman
R/o Nai Basti, Near Water Tank
Jaspur, District Udham Singh Nagar …….Applicant

Versus

1. State of Uttaranchal.
2. Additional Sessions Judge/ F.T.C.
Kashipur, Udham Singh Nagar .... Respondents

Hon'ble Prafulla C. Pant, J

Heard Shri A.S. Gill, learned counsel for the applicant and learned A.G.A. for the respondents.

2. By means of this petition, moved under Section 482 of Code of Criminal Procedure, 1973 (for brevity herein after referred as Cr.P.C.) the petitioner has challenged the order dated 02.08.2006, passed by learned Additional Sessions Judge, Kashipur, in Sessions Trial No. 232 of 2004.

3. It appears that in the aforesaid sessions trial, the trial court examined three eye-witnesses namely P.W. 1 Mohammad Ashraf, P.W. 2 Rashid and P.W. 3 Hazi Abid. P.W. 1 Mohd. Ashraf and P.W. 3 Hazi Avid, have stated that apart from the accused, facing trial, Rafiya, Gulam Dhuna, Nayeem Khan and Shahid alias Lovely, were also involved in the commission of murder of Aslam. It appears that at that stage, the prosecution, moved an application under Section 319 Cr.P.C. requesting to summon the four accused, named

by the witnesses, apart from those who are facing trial. The trial court turned down the request vide impugned order dated 02.08.2006 on the ground that all the witnesses have not been examined. Learned counsel for the petitioner, who is informant, states that the eyewitnesses of the commission of crime are already examined. The copy of First Information Report also shows that it is alleged in the First Information Report that accused Shahid alias Lovely, fired shot from his pistol on the person of Aslam (deceased).

4. In the circumstances, there appears to be a substance in the statement of the learned counsel for the petitioner that the main accused is being kept out of the trail.

5. For the reasons, as discussed above, this petition is summarily disposed of with the direction that the order dated 02.08.2006, passed in Sessions Trial No. 232 of 2004 by the trial court on application 62B is hereby quashed. The trial court is directed to re-examine the matter and pass appropriate orders on application 62B. The petition stands disposed of summarily.

(Prafulla C. Pant, J.)

Dt. 27.09.2006
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